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# SENATE BILL No. 271

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 27-4-1-4; IC 27-4-1.6.

**Synopsis:** Insurer interest in repair facilities. Specifies requirements for certain insurer relationships with motor vehicle repair facilities. Makes a violation of the requirements an unfair and deceptive act or practice in the business of insurance.

**Effective:** July 1, 2005.

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## Weatherwax

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January 6, 2005, read first time and referred to Committee on Commerce and Transportation.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## SENATE BILL No. 271

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 27-4-1-4 IS AMENDED TO READ AS FOLLOWS  
2       [EFFECTIVE JULY 1, 2005]: Sec. 4. The following are hereby defined  
3       as unfair methods of competition and unfair and deceptive acts and  
4       practices in the business of insurance:

5       (1) Making, issuing, circulating, or causing to be made, issued, or  
6       circulated, any estimate, illustration, circular, or statement:

7       (A) misrepresenting the terms of any policy issued or to be  
8       issued or the benefits or advantages promised thereby or the  
9       dividends or share of the surplus to be received thereon;

10       (B) making any false or misleading statement as to the  
11       dividends or share of surplus previously paid on similar  
12       policies;

13       (C) making any misleading representation or any  
14       misrepresentation as to the financial condition of any insurer,  
15       or as to the legal reserve system upon which any life insurer  
16       operates;

17       (D) using any name or title of any policy or class of policies

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misrepresenting the true nature thereof; or  
 (E) making any misrepresentation to any policyholder insured  
 in any company for the purpose of inducing or tending to  
 induce such policyholder to lapse, forfeit, or surrender the  
 policyholder's insurance.

(2) Making, publishing, disseminating, circulating, or placing  
 before the public, or causing, directly or indirectly, to be made,  
 published, disseminated, circulated, or placed before the public,  
 in a newspaper, magazine, or other publication, or in the form of  
 a notice, circular, pamphlet, letter, or poster, or over any radio or  
 television station, or in any other way, an advertisement,  
 announcement, or statement containing any assertion,  
 representation, or statement with respect to any person in the  
 conduct of the person's insurance business, which is untrue,  
 deceptive, or misleading.

(3) Making, publishing, disseminating, or circulating, directly or  
 indirectly, or aiding, abetting, or encouraging the making,  
 publishing, disseminating, or circulating of any oral or written  
 statement or any pamphlet, circular, article, or literature which is  
 false, or maliciously critical of or derogatory to the financial  
 condition of an insurer, and which is calculated to injure any  
 person engaged in the business of insurance.

(4) Entering into any agreement to commit, or individually or by  
 a concerted action committing any act of boycott, coercion, or  
 intimidation resulting or tending to result in unreasonable  
 restraint of, or a monopoly in, the business of insurance.

(5) Filing with any supervisory or other public official, or making,  
 publishing, disseminating, circulating, or delivering to any person,  
 or placing before the public, or causing directly or indirectly, to  
 be made, published, disseminated, circulated, delivered to any  
 person, or placed before the public, any false statement of  
 financial condition of an insurer with intent to deceive. Making  
 any false entry in any book, report, or statement of any insurer  
 with intent to deceive any agent or examiner lawfully appointed  
 to examine into its condition or into any of its affairs, or any  
 public official to which such insurer is required by law to report,  
 or which has authority by law to examine into its condition or into  
 any of its affairs, or, with like intent, willfully omitting to make a  
 true entry of any material fact pertaining to the business of such  
 insurer in any book, report, or statement of such insurer.

(6) Issuing or delivering or permitting agents, officers, or  
 employees to issue or deliver, agency company stock or other

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capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(7) Making or permitting any of the following:

(A) Unfair discrimination between individuals of the same class and equal expectation of life in the rates or assessments charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract; however, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(B) Unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, assessments, or rates charged or made for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever; however, in determining the class, consideration may be given to the nature of the risk, the plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(C) Excessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for:

(i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;

(ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance; or

(iii) policies or contracts of any other kind or kinds of insurance whatsoever.

However, nothing contained in clause (C) shall be construed to apply to any of the kinds of insurance referred to in clauses (A) and (B) nor to reinsurance in relation to such kinds of insurance.

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Nothing in clause (A), (B), or (C) shall be construed as making or permitting any excessive, inadequate, or unfairly discriminatory charge or rate or any charge or rate determined by the department or commissioner to meet the requirements of any other insurance rate regulatory law of this state.

(8) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract or policy of insurance of any kind or kinds whatsoever, including but not in limitation, life annuities, or agreement as to such contract or policy other than as plainly expressed in such contract or policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends, savings, or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract or policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, limited liability company, or partnership, or any dividends, savings, or profits accrued thereon, or anything of value whatsoever not specified in the contract. Nothing in this subdivision and subdivision (7) shall be construed as including within the definition of discrimination or rebates any of the following practices:

(A) Paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, so long as any such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders.

(B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense.

(C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first year or of any subsequent year of insurance thereunder, which may be made retroactive only for such policy year.

(D) Paying by an insurer or insurance producer thereof duly

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licensed as such under the laws of this state of money, commission, or brokerage, or giving or allowing by an insurer or such licensed insurance producer thereof anything of value, for or on account of the solicitation or negotiation of policies or other contracts of any kind or kinds, to a broker, an insurance producer, or a solicitor duly licensed under the laws of this state, but such broker, insurance producer, or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.

(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance producer or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of the lender's right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.

(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of insurance producers or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, insurance producer, or broker or brokers. However, this subdivision shall not prevent the exercise by any

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seller of such property or the one making a loan thereon of the right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

(A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.

(B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.

(E) Insurance provided by or through motorists service clubs or associations.

(F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:

(i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;

(ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common carrier immediately before or after the flight;

(iii) insures against baggage loss during the flight to which the ticket relates; or

(iv) insures against a flight cancellation to which the ticket relates.

(14) Refusing, because of the for-profit status of a hospital or medical facility, to make payments otherwise required to be made under a contract or policy of insurance for charges incurred by an insured in such a for-profit hospital or other for-profit medical facility licensed by the state department of health.

(15) Refusing to insure an individual, refusing to continue to issue insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage, solely because of that

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individual's blindness or partial blindness, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

(16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 of this chapter).

(17) Between policy renewal dates, unilaterally canceling an individual's coverage under an individual or group health insurance policy solely because of the individual's medical or physical condition.

(18) Using a policy form or rider that would permit a cancellation of coverage as described in subdivision (17).

(19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor vehicle insurance rates.

(20) Violating IC 27-8-21-2 concerning advertisements referring to interest rate guarantees.

(21) Violating IC 27-8-24.3 concerning insurance and health plan coverage for victims of abuse.

(22) Violating IC 27-8-26 concerning genetic screening or testing.

(23) Violating IC 27-1-15.6-3(b) concerning licensure of insurance producers.

(24) Violating IC 27-1-38 concerning depository institutions.

(25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning the resolution of an appealed grievance decision.

(26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or IC 27-8-5-19.2.

(27) Violating IC 27-2-21 concerning use of credit information.

**(28) Violating IC 27-4-1.6 concerning insurer interest in motor vehicle repair facilities.**

SECTION 2. IC 27-4-1.6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

**Chapter 1.6. Insurer Interest in Motor Vehicle Repair Facilities**

**Sec. 1. As used in this chapter, "arm's length transaction" means a transaction negotiated or carried out by two (2) parties with substantially equal bargaining power and each acting in the party's own interest.**

**Sec. 2. As used in this chapter, "claimant" means a person entitled to coverage under a motor vehicle insurance policy.**

**Sec. 3. As used in this chapter, "claim center" means a location designated by an insurer where a claims adjuster, an employee, or**

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an agent of the insurer performs an initial damage estimate on a motor vehicle under the terms of a motor vehicle insurance policy.

Sec. 4. As used in this chapter, "commissioner" refers to the commissioner appointed under IC 27-1-1-2.

Sec. 5. As used in this chapter, "favored facility agreement" means an agreement between an insurer and a repair facility under which the insurer agrees to recommend or otherwise promote the use of the repair facility by a policyholder or claimant.

Sec. 6. As used in this chapter, "motor vehicle insurance policy" refers to an insurance policy that provides any kind of insurance described in IC 27-1-5-1, Class 2(f).

Sec. 7. As used in this chapter, "insurer" means an insurer:

(1) described in IC 27-1-2-3; and

(2) that issues a motor vehicle insurance policy.

Sec. 8. As used in this chapter, "policyholder" refers to a person in whose name a motor vehicle insurance policy is issued.

Sec. 9. As used in this chapter, "repair facility" means a business that repairs damage to the interior or exterior of motor vehicles.

Sec. 10. As used in this chapter, "tied repair facility" means a repair facility in which an insurer owns an interest.

Sec. 11. (a) Except as provided in subsection (b), an insurer may not own or acquire an interest in a repair facility.

(b) An insurer that owns an interest in a repair facility that was open for business or on which construction had commenced before July 1, 2005, may:

(1) maintain the ownership interest;

(2) relocate the repair facility; and

(3) operate the repair facility;

if the insurer and the repair facility maintain compliance with this chapter.

Sec. 12. An insurer that owns an interest in a repair facility is considered to have a favored facility agreement with the repair facility.

Sec. 13. (a) If an insurer enters into a favored facility agreement with more than one (1) repair facility, the favored facility agreement entered into with each repair facility must be identical to the favored facility agreement entered into by the insurer with any other repair facility. However, terms of a favored facility agreement may vary to accommodate technical differences between repair facilities such as geographic location or other legitimate business factors.

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(b) Except as provided in subsection (c), an insurer may cancel a favored facility agreement after providing to the repair facility at least thirty (30) days notice of the insurer's intent to cancel. Notice provided under this subsection must include a statement explaining the reason for the cancellation.

(c) An insurer may cancel a favored facility agreement without notice to the repair facility if the insurer, a policyholder of the insurer, or a claimant of the insurer establishes reasonable grounds to believe that the repair facility has acted fraudulently in the repair facility's dealings with the insurer, policyholder, or claimant.

Sec. 14. (a) An insurer that owns an interest in a repair facility shall post the following notice in the tied repair facility:

**"THIS REPAIR FACILITY IS OWNED IN WHOLE OR IN PART BY (NAME OF INSURER). YOU ARE HEREBY NOTIFIED THAT YOU ARE ENTITLED TO SEEK REPAIRS AT ANY REPAIR FACILITY OF YOUR CHOICE."**

(b) The notice required under subsection (a) must be posted prominently in the tied repair facility in a location at which the notice is likely to be seen and read by a customer of the repair facility.

Sec. 15. An insurer may not do the following:

(1) Condition:

- (A) the provision of a product or service;
- (B) a motor vehicle insurance policy renewal;
- (C) pricing; or
- (D) another benefit;

upon the purchase of a good or service from a tied repair facility.

(2) Share information with a tied repair facility that is not made available on identical terms and conditions to other repair facilities with which the insurer has entered into a favored facility agreement.

(3) Engage in a joint marketing program with a tied repair facility.

(4) Provide a tied repair facility with:

- (A) a recommendation;
- (B) a referral;
- (C) a description of damage or required repairs;
- (D) an advantage; or
- (E) access to the insurer's policyholders or claimants;

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that is not provided on identical terms to other repair facilities with which the insurer has entered into a favored facility agreement.

(5) Provide a tied repair facility with access to the insurer's products or services on terms and conditions different from the terms and conditions under which the insurer provides access to the same products or services to another repair facility with which the insurer has entered into a favored facility agreement.

(6) Allow a tied repair facility to use the insurer's name, trademark, trade name, brand, or logo in a manner different from the manner allowed for another repair facility with which the insurer has entered into a favored facility agreement.

(7) Subsidize the business activities or operating expenses of a tied repair facility.

(8) Require a policyholder or claimant of the insurer to obtain a damage estimate for a motor vehicle at a tied repair facility.

(9) Authorize or allow a representative of the insurer to recommend to a policyholder or claimant of the insurer that the policyholder or claimant obtain repairs at a tied repair facility except to the same extent that the person recommends other repair facilities with which the insurer has entered into a favored facility agreement.

(10) Require a policyholder or claimant to use a claim center located on the premises of a tied repair facility.

(11) Enter into a favored facility agreement exclusively with the insurer's tied repair facilities.

(12) Retaliate or discriminate against a person who:

(A) files a complaint with the commissioner; or

(B) assists or participates in any manner in an investigation, hearing, judicial proceeding, or other action brought or maintained;

concerning a violation of this chapter.

(13) Include earnings or losses of a tied repair facility in a rate filing made under this title.

**Sec. 16.** A favored facility agreement between an insurer and the insurer's tied repair facility must be entered into as an arm's length transaction.

**Sec. 17.** This chapter does not confer immunity from an antitrust law of Indiana or the United States. A sanction or penalty imposed as a result of a violation of this chapter is in addition to

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1 other relief granted on the basis of the violation of an antitrust law  
2 of Indiana or the United States.

3 Sec. 18. A violation by an insurer of this chapter is an unfair and  
4 deceptive act or practice in the business of insurance under  
5 IC 27-4-1-4.

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